

Chapter III

Elections

Right of Suffrage

In 1972, the people adopted a constitutional amendment substantially revising California's voting qualifications. The new Article II reflected changes brought about by federal legislation and court decisions. The provisions of this article regulate the right of the people of this state to vote in federal, state, and local elections.¹

It provides that any citizen who is 18 years of age and a resident of California is entitled to vote.² The power to define residence and to provide for registration and free elections resides in the Legislature.³

Furthermore, the Constitution provides that no person who is mentally incompetent or imprisoned or on parole for the conviction of a felony is qualified to vote in California.⁴ The voter's right to cast his or her vote in secrecy is also guaranteed by the California Constitution.⁵

The language formerly contained in the Constitution and the statutes pertaining to suffrage was, perhaps, the most misleading and confusing area in California law as many of the requirements contained therein had been stricken by the courts as being unconstitutional.

For example, the prerequisite that a person be able to read the Constitution in the English language was declared to be a violation of the equal protection clause of *Amendment XIV, U.S. Constitution*, and the voter, if otherwise eligible, need only be literate in another language and have access to sources of political information published in that language.⁶ The *Federal Voting Rights Act of 1970* also declared that literacy tests required before voting were unconstitutional.⁷

Likewise, the residency requirements for state elections of one year in the state, 90 days in the county, and 54 days in the precinct prior to the election, and the 54-day residency requirement in the state for presidential and vice presidential elections have also been declared unconstitutional as being in violation of the equal protection clause and as an infringement on a person's constitutional right to travel.⁸

However, until the adoption of the current Article II and the enactment of conforming statutes these provisions remained in the text of our Constitution and statutory law.

¹ *Constitution*, Article II, Sections 2–4.

² *Constitution*, Article II, Section 2. Eighteen years of age is also the federal requirement, *United States Constitution*, Amendment XXVI.

³ *Constitution*, Article II, Section 3.

⁴ *Constitution*, Article II, Section 4. In California a "felony" is a crime which is punishable with death or by imprisonment in a state prison. *Penal Code*, Section 17.

⁵ *Constitution*, Article II, Section 7.

⁶ *Castro v. State of California*, 2 Cal. 3d 223.

⁷ 42 U.S.C.A. 1973aa. This section was held to be constitutional by the United States Supreme Court, *Oregon v. Mitchell*, 400 U.S. 112.

⁸ 42 U.S.C.A. 1973aa-1; *Dunn v. Blumstein*, 405 U.S. 330; *Keene v. Mihaly*, 11 Cal. App. 3d 1037; *Young v. Gnos*, 7 Cal. 3d 18.

In summation, the courts have concluded that any durational residency requirement exceeding 30 days is unconstitutional unless the state can show that such an imposition is not merely an administrative convenience but an administrative necessity which promotes a compelling state interest. The courts have consistently stricken residency requirements exceeding 30 days.

The California statutory provisions are now in conformity with these decisions. A person may be registered at any time up to and including the 29th day prior to the election.⁹ A new resident who meets the requirements of Article II, Section 2 of the California Constitution, except the residency requirements, may vote for the president and vice president if he or she registers to vote up to and including the eighth day prior to the election.¹⁰

The Legislature has also made provision for the casting of absentee ballots by registered voters who do not wish to cast their ballots at the polling place or who expect to be absent from their precincts or who are unable to vote because of disability on the day on which the election is held.¹¹ Any registered voter may choose to cast an absentee ballot.¹² Additionally, an absentee voter who, because of illness or disability, is unable to return his or her ballot by mail or in person may designate an immediate relative to deliver the ballot to an elections official.¹³

The voter must apply to the county clerk or other proper official for an absentee ballot. The application must be made not more than 28 nor less than eight days prior to the election. However, any ballots received prior to the 29th day shall be kept and processed during the application period. Ballots must be received by the clerk from whom they were obtained by the time the polls close on election day.¹⁴

On election day after the polls are closed, the number of ballots cast are counted and compared with the total number of voters who have signed the precinct roster. The number of votes for and against each candidate and proposition are then tabulated or they are forwarded to a central counting center for tabulation. The count is open to the public and when once begun must be carried on continuously until its completion. The results of the count are posted outside the polling place or counting center. No information regarding the results of the election may be disclosed until after the polls have closed. When the count has been completed the ballots and copies of the tally sheets are forwarded to the county clerk.¹⁵

The Legislature has provided for different methods of voting and tabulating the results including the use of voting machines, punch cards and computers.¹⁶ The most notable use of the mechanical

⁹ *Elections Code*, Section 305.

¹⁰ *Elections Code*, Sections 1100, 1101.

¹¹ *Elections Code*, Sections 1000–1019. *Elections Code*, Section 1005 permits voters living in a precinct which contains 250 or less registered voters and which contains no polling place to cast their votes by absentee ballot.

¹² *Elections Code*, Section 1003.

¹³ *Elections Code*, Section 1013.

¹⁴ *Elections Code*, Sections 1002, 1016.

¹⁵ *Elections Code*, Sections 17000–17063. See also 47 *Op. Att'y Gen.* 167.

¹⁶ *Elections Code*, Sections 15000–15369.

voting machine has occurred in the City and County of San Francisco which has utilized this method of voting since the early part of this century.

Primary and General Elections

California holds primary and general elections to choose most of its state officeholders. The law regulates the direct nomination of candidates for public office by electors, political parties, or organizations of electors without conventions at the primary election and prescribes the conditions to be complied with by electors, political parties, or organizations of electors in order to participate in any such primary.¹⁷

The purpose of the direct primary is to nominate party candidates who will run for office at the ensuing general election. The presidential primary is consolidated with the direct primary.¹⁸ Until recently the direct primary election was held in the even-numbered year on the first Tuesday after the first Monday in June (e.g., June 7, 1994).¹⁹

In an effort to increase California's influence in presidential politics and to increase voter participation, legislation was enacted in 1993 to move California's presidential primary from June to March of 1996. The primary election will be held on the fourth Tuesday in March. Unless new legislation is enacted to make this earlier election time permanent, the presidential primary will return to the original June date after the 1996 primary.²⁰ In a presidential primary the voters decide the number of votes their party's nominee or nominees receive from California at the national convention which selects the party's candidate for the office of the President of the United States.

The general election is held in the even-numbered year on the first Tuesday after the first Monday in November (e.g., November 8, 1994).²¹

Special Elections

The Constitution gives the Governor the authority to call a special statewide election for initiative and referendum measures.²² If a vacancy should occur in the office of either Assembly Member, State Senator or in California's delegation in the House of Representatives or the United States Senate, the Governor shall call a special election to fill the vacancy.²³ A special primary election follows the Governor's proclamation and all of the candidates, regardless of political affiliation, are listed on a single ballot. Should any one candidate receive a majority of all the votes cast at this special primary election, he or she shall be elected and no additional special

¹⁷ See generally, *Elections Code*. At present, there are six officially qualified political parties in California: the American Independent; the Democratic; the Green; the Libertarian; the Peace and Freedom; and the Republican.

¹⁸ *Elections Code*, Section 2552.

¹⁹ *Elections Code*, Sections 23, 2501, 2551.

²⁰ *Statutes of 1993*, Chapter 828.

²¹ *Elections Code*, Sections 20, 2550.

²² *Constitution*, Article II, Section 8(c), 9(c).

²³ *United States Constitution*, Article I, Section 4; *Constitution*, Article IV, Section 2(d); *Elections Code*, Sections 2650, 2651. For filling a vacancy by appointment for the office of U.S. Senator from California, see *Elections Code*, Section 25001 and 44 *Op. Att'y Gen.* 30.

election shall be called. In the event that no one receives a majority of all votes cast, the candidate of each qualified political party who receives the most votes cast for the candidates of that party shall be placed on the ballot as the candidate of that party at the ensuing special general election.²⁴

Partisan and Nonpartisan Offices

In California there are two classes of offices to which candidates are elected—partisan and nonpartisan. Partisan offices are offices for which a political party may nominate a candidate. Nonpartisan offices are offices for which no political party may nominate a candidate.²⁵ Additionally, a constitutional amendment adopted by the people in 1986 prohibits any political party or party central committee from endorsing, supporting, or opposing a candidate for nonpartisan office.²⁶ The Governor, Lieutenant Governor, Secretary of State, State Treasurer, Attorney General, Controller, Insurance Commissioner, and United States Senators are partisan officers elected by a vote of the electors of the entire state. Assembly Members, State Senators, Representatives in the United States Congress, and members of the State Board of Equalization are also partisan officers, but they are elected by the voters in the districts they represent.

Candidates for partisan offices are nominated by the voters of the respective political parties at the direct primary election in March and elected or defeated by all the qualified voters at the general election in November.

For many years, California allowed a candidate for public office to seek the nomination of another party or parties in addition to his or her own party nomination at the primary election.²⁷ This procedure was known as “crossfiling.” A candidate who won both major party nominations was practically assured of being elected at the general election in November as his or her name would be the only one to appear on the general election ballot.

The candidate who won his or her own party's nomination, but failed to win the nomination of the other party, had a runoff with the other party's nominee at the general election. However, a candidate who failed to win his or her own party's nomination could not be the nominee of any other party in the November election, even though he or she may have received the most votes for the other party's nomination.²⁸

²⁴ *Elections Code*, Sections 7200–7203.

²⁵ *Elections Code*, Sections 36, 37.

²⁶ *Constitution*, Article 2, Section 6(b). The constitutionality of this provision was recently challenged in the courts, but the Supreme Court remanded the case on procedural grounds and did not resolve the issue. *Renne v. Geary* (1991), —U.S.—, 111 S. Ct. 2331.

²⁷ *Statutes of 1913*, Chapter 690. See also *Statutes of 1939*, Chapter 26. “The primary election of 1913 (*Stats. 1913*, pp. 1379, 1389) specifically provided that a person could become the candidate of more than one political party for the same office. This provision was held constitutional (*Hart v. Jordan*, 168 Cal. 32). Although this provision was not retained when the *Elections Code* was adopted, it remains the rule (*Shaffer v. Jordan*, 213 F. 2d 393).” *Jones v. McCollister*, 159 Cal. App. 2d 708.

²⁸ *Elections Code*, Section 2742, repealed by *Statutes of 1959*, Chapter 284; reenacted by Chapter 31 of the *Statutes of the First Extraordinary Session of 1960*; and renumbered and reenacted as *Elections Code*, Section 6611 by *Statutes of 1961*, Chapter 23; repealed. *Statutes of 1976*, Chapter 1191. In the direct primary election of August 1918, James Rolph, Jr., a Republican lost his own party's nomination but won the Democratic Party nomination, defeating Democrat Francis J. Heney by more than 14,000 votes. However, because he had not won his own party nomination, he was not permitted to run as the Democratic candidate at the general election in 1918. See *Heney v. Jordan*, 179 Cal. 24, 27–29.

The 1959 session of the Legislature enacted a new section which precluded a candidate for partisan office from crossfiling. Though a candidate for partisan office may no longer crossfile, there is nothing in the law which precludes the candidate who receives the nomination of his or her declared party and the nomination of another political party by write-in votes from being the candidate of both parties, provided that his or her write-in votes are also equal to 1 percent of all votes cast for that office at the last preceding general election.²⁹

The Justices of the Supreme Court and the Superintendent of Public Instruction are nonpartisan officers elected by the voters of the entire state. Justices of the appellate courts and judges of the superior courts are nonpartisan officers elected by the voters of the districts in which they serve.

Any candidate for a judicial, school, county, municipal, or other nonpartisan office, who at a primary election shall receive a majority of all votes cast for candidates for the office, shall be elected to that office³⁰ and that office shall not appear on the general election ballot.³¹

If no candidate receives a majority of the total votes cast for a nonpartisan office in the primary election, the names of the two candidates receiving the highest number of votes will appear on the general election ballot.³²

In the event two or more candidates are to be elected to a given nonpartisan office, and a greater number of candidates receive a majority than the number to be elected, the candidates, equal in number to the offices to be filled, who have received the highest votes of those securing a majority, shall be elected.³³

Where no candidate has been elected to a nonpartisan office, or where the number of candidates elected to a nonpartisan office at a primary election is less than the total number to be elected to that office, the candidates not elected, equal in number to twice the number remaining to be elected to that nonpartisan office, or less, if the total number of candidates not elected is less, who receive the highest number of votes shall be the candidates for that office at the ensuing election.³⁴

For example, if there were three nonpartisan offices to be filled and there were six candidates for these offices, and if only one of the candidates received a majority of the votes cast at the primary election, the other two offices would remain vacant and the four candidates who received the next highest vote but did not attain a majority would become candidates at the ensuing election. On the other hand, if there were only four candidates running for three nonpartisan offices and only one candidate received a majority of the votes cast, the other three would become candidates for the remaining two offices at the ensuing election.

²⁹ Elections Code, Section 6661(a). See also 35 Op. Att'y Gen. 206; 59 Op. Att'y Gen. 414.

³⁰ Elections Code, Sections 37, 6611.

³¹ Elections Code, Section 6611.

³² Elections Code, Sections 6612, 6614. See also 20 Op. Att'y Gen. 53.

³³ Elections Code, Section 6611.

³⁴ Elections Code, Sections 6612, 6614.

Campaign Financing and the Fair Political Practices Commission

The Political Reform Act of 1974, an initiative measure known as Proposition 9, established the Fair Political Practices Commission and empowered it to oversee particular relationships between public officeholders and seekers and financial influence. Prime attention was directed toward the disclosure of campaign contributions and expenditures through the use of mandatory reports.

Campaign statements are required of candidates and committees, the latter being defined as any individual, group or other entity whose purpose is to influence the action of voters for or against a candidate or issue. A "Recipient Committee" is one which receives \$1,000 or more in contributions during a calendar year; an "Independent Expenditure Committee" is one which makes expenditures, independent of those made directly to or at the request of candidates or committees, of \$1,000 or more in any calendar year, and a "Major Donor Committee" is one which contributes to or expends funds at the behest of candidates or committees totaling \$10,000 or more in a calendar year.³⁵ Statements filed by legislators must be filed with the Secretary of State, the clerk of the largest county by population in a district, and the clerk of the county of domicile of the candidate or committee.³⁶

Contributions may be in the form of a payment, a forgiveness of a loan, enforceable promise of money or anything of value (pledge) unless it is clearly not made for political purposes.³⁷ All contributions are reportable. Contributions totaling \$100 or more require full identification of the donor and must be made by check or other instrument containing the names of the payee and the donor.³⁸ No person may deliver or receive a contribution in the State Capitol; in a state office building or in any office, other than a legislator's district office, for which the state pays a majority of the rent.³⁹ Anonymous contributions of \$100 or more by a single contributor may not be used on behalf of the candidate but must promptly be turned over to the Secretary of State for deposit into the General Fund.⁴⁰

The Secretary of State is also responsible for receiving reports from lobbyists and their employers regarding expenditures, such as lunch or a football ticket, resulting from their association with state officeholders.⁴¹ Statements of economic interest are annually filed by public officials, their staffs, and anyone in governmental employ whose position might allow some proximity to the decisionmaking process of state and local officials.⁴²

The aim is to make obligatory public disclosure of the sources and expenditures made in support of the candidate and to inhibit any

³⁵ *Government Code*, Section 82013.

³⁶ *Government Code*, Section 84215.

³⁷ *Government Code*, Section 82015.

³⁸ *Government Code*, Section 84300.

³⁹ *Government Code*, Section 84309.

⁴⁰ *Government Code*, Section 84304.

⁴¹ *Government Code*, Sections 86107–86111.

⁴² *Government Code*, Section 87200, *et seq.*

improper election practices; the means is a vast network of information continuously being funneled into the commission where it is reviewed and made available to the public.

The Electoral College and Choosing the President

A brief description of how the electoral college came into existence and the manner of selecting the President may provide the reader a cursory view of the procedure followed in electing the Chief Executive.

The Constitutional Convention of 1787, after prolonged debate, finally reached a compromise in the method to be used in selecting the President of the United States. The manner of this selection has not been materially changed since the adoption of the original proposal by the convention.

It was generally agreed that the President should be elected rather than appointed. The dispute at the convention arose whether the President should be elected by a vote of the people, the Congress, by the state legislatures, or be chosen by electors. The resolution of this problem found its way into Article II of the Federal Constitution which provides that each state shall appoint, in such manner as the Legislature may direct, a number of electors, equal to the whole number of Senators and Representatives to which the state may be entitled in the Congress;⁴³ but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector. These electors would then meet and vote for "two persons." This ambiguous language resulted in the famous tie vote for the presidency between Thomas Jefferson and Aaron Burr (each received 73 votes), and Jefferson was subsequently elected by the House of Representatives. As a result, the 12th Amendment to the United States Constitution was ratified in 1804. This amendment reads in part as follows:

"The electors shall meet in their respective States and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; *they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President*, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President.

⁴³ *United States Constitution*, Amendment XXIII. This amendment provides Washington, D.C., with presidential and vice presidential electors equal to what they would be entitled to if they were a state, but in no event shall they have more than the least populous state.

But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice * * *".

This method of electing the President and Vice President has been highly controversial over the years and more than 100 attempts have been made in Congress to alter or abolish the system. The major complaint is that it is possible for a candidate to receive a greater number of votes than his opponent, but fail to win the requisite number of electoral votes. Thus, it is possible for the candidate receiving a lesser number of popular votes to be elected President or Vice President.

For example, in 1876, Samuel J. Tilden received 4,284,757 votes and 184 electoral votes, as opposed to Rutherford B. Hayes, who received 4,033,950 votes but 185 electoral votes. Mr. Hayes was elected President. In 1888, Benjamin Harrison received 5,444,337 votes and 233 electoral votes; Grover Cleveland received 5,540,050 votes, but only 168 electoral votes. Harrison was elected President. This problem can be compounded if the House of Representatives elects the President. In the presidential election of 1824, Andrew Jackson received a plurality of the popular and electoral votes, but in neither case did he receive an absolute majority. At that time there were 24 states represented in the Congress and, therefore, 13 votes were required to elect the President. Had the Congressional delegations followed the choice of the electors in their states, Jackson would have received 11 votes; John Quincy Adams, 7; William H. Crawford, 3; and Henry Clay, 3. However, Mr. Adams received 13 votes, and was elected President of the United States. It is evident that several delegations had not followed the wishes of their constituents. Mr. Clay was shortly thereafter appointed the Secretary of State.⁴⁴

Despite all of the objections that have been raised to this system, it is still the method we use to elect our President and Vice President.

Recall Elections ⁴⁵

The Constitution provides that every elective public officer of the State of California may be removed from office at any time, even immediately upon assuming such office, by the electors entitled to vote for a successor of such incumbent. This procedure is known as the recall.⁴⁶

To recall an incumbent state officer elected at a statewide election (e.g., Governor, Lieutenant Governor, Controller, Treasurer, Secretary of State, Attorney General, Superintendent of Public Instruction, Insurance Commissioner, and Supreme Court Justices)

⁴⁴ *Register of Debates in Congress*, Vol. I, February 9, 1825, pp. 526-527. See also Augustus C. Buell, *History of Andrew Jackson*, Vol. II, Charles Scribner's Son, New York, 1904, pp. 172-175.

⁴⁵ *Constitution*, Article II, Sections 13-19. These sections provide the basis for the procedure to recall elective state officials. The provisions for the recall of county and city officials differ slightly from the provisions governing the recall of state officials. See *Elections Code*, Division 16, Ch. 1-4.

⁴⁶ Members of the Congress of the United States from California are not subject to the recall provisions of Article II. "The courts have on many occasions held that a member of the Congress of the United States is a 'Federal Officer' rather than a 'State Officer.' The conclusion is inescapable that a California Member of the Congress is not an elective public officer of the State of California as those words are used in Article II, Sections 13, 14 and that therefore he is not subject to the recall provisions of the California Constitution." 11 *Op. Att'y Gen.* 14.

a petition signed by qualified voters equal to at least 12 percent of the entire vote cast at the last election for all candidates for the office in question is required. The petition must be circulated in not less than five counties and must be signed by qualified electors in each of these counties equal in number to not less than 1 percent of the votes cast in each of the counties for that office at the last election.⁴⁷

To recall an incumbent state officer elected in a political subdivision of the state (e.g., Assembly Members, State Senators, justices of the appellate courts, and members of the State Board of Equalization) a petition signed by qualified voters entitled to vote for a successor to the incumbent equal in number to at least 20 percent of the entire vote cast at the last election for all candidates for that office is required.⁴⁸

Prior to initiating a recall petition against a state officer, the proponents of the recall must publish a notice of intention to circulate such petition; serve the notice upon the officer sought to be recalled; and, file a copy of the notice and proof of service on the officer to be recalled with the Secretary of State.⁴⁹

The notice of intention must include a statement of the grounds upon which the recall is being sought.⁵⁰ This statement, along with a rejoinder filed by the officer against whom recall is being sought, appears on the petition for the information of the voters. Should the officer fail to answer, a statement to that effect shall appear on the petition.⁵¹

When the petitions have been circulated they are filed with the county clerk who verifies that the signatories are qualified electors. Upon each submission of petitions or sections thereof, if less than 500 signatures are included, the elections official must count the number of signatures, and forward the results to the Secretary of State. If more than 500 signatures are submitted, the official may verify a random sampling of 3 percent of the signatures, or 500, whichever is less.⁵²

When the Secretary of State determines and certifies that the requisite number of signatures have been obtained, the Secretary notifies the Governor, who then calls for an election on the question of recall not less than 60, nor more than 80 days, from the date of certification.⁵³

Accompanying, or as part of, the sample ballot are copies of the statement of the proponents' reasons desiring the officer's removal and the officer's answer (if any) defending his or her conduct in office.⁵⁴

On the election ballot the following question is posed:

"Shall [name of officer sought to be recalled] be recalled (removed) from the office of [title of office]?"

⁴⁷ *Constitution*, Article II, Section 14(b).

⁴⁸ *Id.*

⁴⁹ *Elections Code*, Sections 27020, 27021, 27022.

⁵⁰ *Elections Code*, Section 27020.

⁵¹ *Elections Code*, Section 27031.

⁵² *Elections Code*, Sections 3520, 27101, 27102.

⁵³ *Constitution*, Article II, Section 15; *Elections Code*, Sections 27103, 27104.

⁵⁴ *Elections Code*, Sections 27301 and 27316.

Following the question are the words "Yes" and "No" on separate lines, with a blank space at the right of each, in which the voter indicates his or her vote for or against recall.⁵⁵

If a majority or exactly half of those voting on the recall of the incumbent state officer vote "No," the incumbent shall continue in office, and be repaid from the State Treasury any amount legally expended as expenses of such election. No proceedings for another recall election shall be initiated against a successful incumbent within six months after such a recall election.⁵⁶

Should the majority voting at a recall election vote "Yes" the incumbent shall be deemed removed from office, upon the qualification of a successor.⁵⁷

Candidates may be nominated for an office to be filled at a recall election in the same manner prescribed for nominating such candidates for that office at a regular election. The nominating petition must be filed with the Secretary of State not less than 68 days preceding the recall election.⁵⁸

The names of any candidates so nominated shall appear on the recall ballot below the question of recall. No vote cast for a candidate is counted unless the voter also voted on the question of recall. The name of the person against whom the recall petition is filed cannot appear on the ballot as a candidate to succeed himself. If the officer is recalled, the candidate who receives the highest number of votes at the election recalling such officer is elected for the remainder of the term of the recalled officer. If the person securing the highest number of votes fails to qualify within 10 days after receiving the certificate of election, the office is deemed vacant and must be filled according to law.⁵⁹

Similar statutory provisions govern the recall of elected local officers, the major difference being that these local officers are provided a "grace" period after assuming office before recall proceedings may be commenced against them.⁶⁰

Measures on the Ballot

An amendment to or a revision of the Constitution, bond issues, and acts amending or repealing initiative acts (proposed by the Legislature)⁶¹ and initiative and referendum measures (proposed by the people)⁶² must be approved by the electorate before they become effective.⁶³

The order in which all measures that are to be submitted to voters shall appear on the ballot is as follows: (1) Bond measures in the order in which they qualify; (2) Constitutional amendments in the

⁵⁵ *Elections Code*, Section 27310.

⁵⁶ *Constitution*, Article II, Section 18; *Elections Code*, Section 27343.

⁵⁷ *Constitution*, Article II, Section 15; *Elections Code*, Section 27344.

⁵⁸ *Elections Code*, Section 27341.

⁵⁹ *Constitution*, Article II, Section 15; *Elections Code*, Sections 27341, 27342, 27345, 27346.

⁶⁰ *Constitution*, Article II, Section 19; *Elections Code*, Sections 27008, 27200–27231. Recall proceedings may not be commenced against officers of a city, county, special district, school district, community college district or a member of the board of education until he or she has been in office for at least 90 days. If a recall election has been held and is determined in favor of the incumbent, no new recall may be commenced for six months.

⁶¹ *Constitution*, Article XVIII, Sections 1–4; Article XVI, Section 1; Article II, Section 10(c).

⁶² *Constitution*, Article II, Sections 8, 9.

⁶³ These measures may be voted upon at the general election, the direct primary election, or at a special election called by the Governor.

order in which they qualify; (3) Other legislative measures in the order in which they are approved by the Legislature; (4) Initiative measures in the order in which they qualify; and (5) Referendum measures in the order in which they qualify.⁶⁴

Prior to the election, a ballot pamphlet prepared and published by the Secretary of State is mailed to the address of each registered voter.⁶⁵ The pamphlet contains the text of the measures to appear on the ballot, an official summary prepared by the Attorney General, an analysis of each proposition, prepared by the Legislative Analyst; and arguments for and against each measure, written by the proponents and opponents of the measures, a concise summary of the general meaning and effect of "yes" and "no" votes on each measure, and the total number of votes cast "for" and "against" the measure in the Senate and the Assembly if it is a measure passed by the Legislature.⁶⁶ Additionally, at each statewide election where state bond measures are on the ballot, the pamphlet must include a statement, prepared by the Legislative Analyst, discussing California's current bonded indebtedness situation.⁶⁷

If any provision or provisions of two or more measures, approved by the electors at the same election, conflict, the provisions of the measure receiving the highest affirmative vote prevails.⁶⁸ Any amendment to the Constitution, proposed by the Legislature, and submitted to the people for ratification, takes effect the day after its adoption by a majority vote of the people at the election.⁶⁹ Any act, law, or amendment to the Constitution submitted to the people by either initiative or referendum petition and approved by a majority of the votes cast thereon, at any election, shall take effect the day after the election.⁷⁰

No proposed statute or amendment to the Constitution may be placed on the ballot that would name any individual to hold any office or identify or name any private corporation to perform any function or to have any power or duty.⁷¹

The Initiative and the Referendum

In California the Constitution provides the people with the power to propose statutes and amendments to the Constitution, and to approve or reject statutes or parts of statutes enacted by the Legislature. These powers which the people have reserved to themselves are called the "initiative" and "referendum," respectively.⁷²

⁶⁴ *Elections Code*, Section 10218. Note, however, that in 1966 the Legislature enacted, and the Governor signed, Chapter 105, *Statutes of 1966*, which provided that notwithstanding these provisions of the *Elections Code*, Assembly Constitutional Amendment No. 13 would appear first, and be numbered 1-a on the ballot for the 1966 general election.

⁶⁵ *Elections Code*, Sections 3568, 3569, and 3578.

⁶⁶ *Elections Code*, Sections 3570–3572; *Government Code*, Sections 88001–88003; *Statutes of 1993*, Chapter 156.

⁶⁷ *Elections Code*, Section 3572.5.

⁶⁸ *Constitution*, Article II, Section 10(b); Article XVIII, Section 4.

⁶⁹ *Constitution*, Article XVIII, Section 4.

⁷⁰ *Constitution*, Article II, Section 10(a).

⁷¹ *Constitution*, Article II, Section 12. In 1947 an initiative amendment to the Constitution was adopted naming Mrs. Myrtle Williams to serve as the Director of the Department of Social Welfare and Assemblyman Gordon R. Hahn to serve in the event she declined to act; and if Mr. Hahn declined to act, Assemblyman John W. Evans was to act as director. Article XXV, Section 4, *Constitution of 1947*, repealed November 8, 1949.

⁷² *Constitution*, Article II, Sections 8(a), 9(a); Article XVIII, Section 3.

The Initiative

By use of the initiative, the people have a direct means of enacting laws and adopting amendments to the Constitution, independent of the Legislature and the Governor. This is accomplished by submitting the initiative measure directly to the electors.

Prior to the circulation of an initiative petition, a draft of the proposal must be submitted to the Attorney General, who must prepare a title and a summary of the main purposes and provisions of the proposed measure.⁷³ In the event the Attorney General is a proponent of a proposed measure, the Legislative Counsel shall perform this function.

The initiative petition must set forth in full the proposed law or amendment to the Constitution. No initiative measure may relate to more than one subject.⁷⁴

Initiative petitions are presented to the Secretary of State after certification that they have been signed by qualified electors equal in number to at least 8 percent (if they are to amend the Constitution) or 5 percent (if it is a statute) of all the votes cast for all candidates for Governor at the last preceding general election at which a Governor was elected.⁷⁵

The Secretary of State must place the measure on the ballot at the next succeeding general election which is held at least 131 days after the qualification of the measure, or on the ballot at any statewide special election which is held prior to the general election.⁷⁶

Initiative measures adopted by the people are not subject to the Governor's veto, nor can they be amended or repealed except by a vote of the electors, unless otherwise provided in the initiative measure. The Legislature may enact a proposal to amend or repeal an initiative act. However, the amendment or repeal will not become effective until submitted to and approved by the electors.⁷⁷

The Referendum

The second power reserved to the people is known as the referendum. The referendum provides a means whereby the people can approve or reject laws or sections of laws passed by the Legislature and signed by the Governor from going into effect.

The referendum may ask that any statute or section or part of any statute passed by the Legislature be submitted to the electors for their approval or rejection. The Secretary of State shall then submit to the electors, for their approval or rejection, such act, or such statute, section or part of such statute, at the next succeeding general election occurring at least 31 days after the referendum has qualified or at any special election which may be called by the Governor for the purpose of voting on the measure.⁷⁸

⁷³ *Constitution*, Article II, Section 10(d); *Elections Code*, Sections 3501–3503, 3530, 3531.

⁷⁴ *Constitution*, Article II, Section 8(b), 8(d).

⁷⁵ *Constitution*, Article II, Section 8(b). The number of signatures necessary to submit initiative measures through 1994 is as follows:
Constitutional amendments—615,958.
Statutory measures—384,974.

⁷⁶ *Constitution*, Article II, Section 8(c).

⁷⁷ *Constitution*, Article II, Section 10(c).

⁷⁸ *Constitution*, Article II, Section 9.

Statutes enacted during a regular session go into effect on January 1 the following year provided that 90 days have elapsed between the time the bill was enacted and January 1.⁷⁹ Under this provision a bill enacted on or before October 2, 1993, would go into effect on January 1, 1994, while a bill enacted on October 3 or thereafter would not be effective until January 1, 1995.

Certain acts, however, e.g., those containing urgency sections, calling special elections, providing tax levies or appropriating money for the usual and current expenses of the state, go into effect immediately upon enactment and therefore, they are not subject to the referendum power.⁸⁰

An urgency measure is defined in the Constitution as a statute "necessary for immediate preservation of the public peace, health or safety." An urgency statute must be passed by a two-thirds vote of all the members elected to each house and may not create or abolish any office or change the salary, term or duties of any office, or grant any franchise or special privilege or create any vested right or privilege.⁸¹

Prior to the circulation of any referendum petition for signature, a draft of the proposition must be submitted to the Attorney General, who prepares a title and a summary of the measure.⁸²

A referendum measure may be proposed by presenting the Secretary of State with a petition certified to have been signed by electors equal in number to 5 percent of the total number of votes cast for all candidates for Governor at the last preceding gubernatorial election. The petition must be presented within 90 days after the enactment of the statute in question.⁸³

No such act or section or part of such act that is placed on the ballot by referendum shall go into effect until and unless approved by a majority of the qualified electors voting thereon.

If a referendum petition is filed against any section or part of any act the remainder of such act shall not be delayed from going into effect.⁸⁴

Referendum statutes approved by the people under the referendum provisions may be amended or repealed by the Legislature subsequent to their adoption.⁸⁵

⁷⁹ *Constitution*, Article IV, Section 8(c). Statutes passed during a special session of the Legislature go into effect on the 91st day after the final adjournment of the special session at which the bill was passed.

⁸⁰ *Constitution*, Article II, Section 9(a).

⁸¹ *Constitution*, Article IV, Section 8(d).

⁸² *Constitution*, Article II, Section 10(d).

⁸³ *Constitution*, Article II, Section 9(b). The number of signatures necessary to submit a referendum measure until after the general election of 1994 is 384,974.

⁸⁴ *Constitution*, Article II, Section 10(a).

⁸⁵ *Constitution*, Article II, Section 10(c).



Governor Pete Wilson signs a bill into law.
Accompanying the Governor are Assembly Speaker Willie L. Brown, Jr. (r.)
and Assembly Republican Leader James L. Brulte (l.).